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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re | : | Chapter 11 |
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| EASTMAN KODAK COMPANY, <u>et al.</u> , | : | Case No. 12-10202 (ALG) |
| | : | |
| Debtors. | : | (Jointly Administered) |
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JOINDER OF IMAX CORPORATION TO THE LIMITED OBJECTION OF SAMSUNG ELECTRONICS CO. LTD. TO DEBTORS' MOTION FOR ENTRY OF FINAL ORDER (I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364 (DOCKET NO. 253)

(IMAX'S JOINDER OBJECTING TO DIP MOTION)



IMAX Corporation ("IMAX") submits this joinder (the "Joinder") to the Limited Objection of Samsung Electronics Co. Ltd. to Debtors' Motion for Entry of Final Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, filed at docket no. 253 (the "Objection"). With respect to the DIP Motion (defined below), IMAX respectfully represents as follows:

Background

A. The Chapter 11 Filings

1. On January 19, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On January 25, 2012, the United States Trustee for the Southern District of New York appointed the Official Committee of Unsecured Creditors pursuant to section 1102 of the Bankruptcy Code.

B. The Kodak DIP Motion

2. On January 19, 2012, the Debtors filed their Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) (Docket No. 16) (the "DIP Motion").

3. On January 20, 2012, this Court entered the Interim Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) (Docket No. 54) (the "Interim DIP Order"), which, among other things, scheduled a final hearing on the DIP Motion for February 15, 2012 (the "Final Hearing"). On February 3, 2012, the Debtors filed their Notice of Filing of Proposed Final Order (I) Authorizing Debtors (A) To Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) And 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 (Docket No. 198) (the "Notice of Proposed Final DIP Order").

4. On February 8, 2012, Samsung Electronics Co. Ltd. ("Samsung") filed its Objection. The Objection seeks to have language added to the Proposed Final DIP Order clarifying that the Debtors and the DIP Lenders¹ will not impair, among other things, " rights related to pre-existing licenses and related agreements." (Objection at 2.)

Joinder to the Objection

5. By this pleading, IMAX joins Samsung in its Objection, pursuant to which it is seeking limited amendments to the Proposed Final DIP Order. Although IMAX is not involved in litigation with Kodak, IMAX has licensing and other related agreements with the Debtors and therefore has common concerns with Samsung. IMAX does not object, as a general

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the DIP Motion.

matter, to the Debtors' request for approval of \$950 million in postpetition financing, however the granting of first priority, senior security interests in all pre- and postpetition property of the Debtors should not impair the unique rights possessed by licensees of intellectual property. For the reasons set forth by Samsung in its Objection, the Proposed Final DIP Order should clarify that any security interest or lien granted as part of the DIP financing cannot be used to (i) deprive a contract counter-party or licensee of its rights under section 365(n) of the Bankruptcy Code or (ii) cut off or otherwise impair the rights afforded licensees of intellectual property under applicable federal and state law. Unlike Samsung's proposed language, IMAX's proposed language set forth below uses more generic language so that the provision applies to all similarly situated parties and not just Samsung.

6. IMAX proposes that Samsung's suggested language to the Proposed Final DIP Order be modified as follows:

Notwithstanding anything to the contrary herein, nothing in this Order shall be deemed to cut off, subordinate or otherwise impair (i) any defenses (including without limitation defenses premised upon rights of offset) that may be asserted by third parties to claims made by the Debtors or their assignees (including the Lenders) or (ii) the rights of third parties as licensees of intellectual property of the Debtors, including without limitation those rights provided by 11 U.S.C. § 365(n) (whether exercised prior to or after entry of this Order) and other applicable law.

A redline marked to show changes to the language proposed by Samsung is attached hereto as

Exhibit A.

Conclusion

7. For the foregoing reasons, the IMAX joins Samsung's Objection to the DIP Motion.

WHEREFORE IMAX joins Samsung's Objection and respectfully requests that any Final Order granting the Kodak DIP Motion be clarified to preserve intellectual property rights of third parties.

Dated: Chicago, Illinois
February 13, 2012

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Exhibit A

Notwithstanding anything to the contrary herein, nothing in this Order shall be deemed to cut off, subordinate or otherwise impair (i) any defenses (including without limitation defenses premised upon rights of offset) that may be asserted by ~~Samsung Electronics Co., Ltd. or its affiliates Samsung Electronics America, Inc. and Samsung Telecommunications America LLC (collectively "Samsung")~~third parties to claims made by the Debtors or their assignees (including the Lenders) or (ii) the rights of ~~Samsung~~third parties as ~~a licensee~~licensees of intellectual property of the Debtors, including without limitation those rights provided by 11 U.S.C. § 365(n) (whether exercised prior to or after entry of this Order) and other applicable law.